

1 COOLEY LLP  
BOBBY GHAJAR (198719)  
2 (bghajar@cooley.com)  
COLETTE GHAZARIAN (322235)  
3 (cghazarian@cooley.com)  
1333 2nd Street, Suite 400  
4 Santa Monica, CA 90401  
Telephone: (310) 883-6400  
5 KATHLEEN HARTNETT (314267)  
(khartnett@cooley.com)  
6 MARK WEINSTEIN (193043)  
(mweinstein@cooley.com)  
7 JUDD LAUTER (290945)  
(jlauter@cooley.com)  
8 ELIZABETH L. STAMESHKIN (260865)  
(lstameshkin@cooley.com)  
9 3175 Hanover Street  
Palo Alto, CA 94304  
10 Telephone: (650) 843-5000  
11 CLEARY GOTTlieb STEEN & HAMILTON LLP  
ANGELA L. DUNNING (212047)  
12 (adunning@cgsh.com)  
1841 Page Mill Road, Suite 250  
13 Palo Alto, CA 94304  
Telephone: (650) 815-4131  
14 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP  
KANNON K. SHANMUGAM (*pro hac vice*)  
15 (kshanmugam@paulweiss.com)  
2001 K Street, NW  
16 Washington, DC 20006  
Telephone: (202) 223-7300  
17 [Full Listing on Signature Page]  
18 Counsel for Defendant Meta Platforms, Inc.

19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN FRANCISCO DIVISION

22 RICHARD KADREY *et al.*,  
23 Individual and Representative Plaintiffs,  
24 v.  
25 META PLATFORMS, INC., a Delaware  
corporation,  
26 Defendant.

Case No. 3:23-cv-03417-VC-TSH

**DEFENDANT META PLATFORMS, INC.'S  
RESPONSE TO PLAINTIFFS' OBJECTIONS  
TO META'S REPLY EVIDENCE**

Judge: Vince Chhabria

1 Defendant Meta Platforms, Inc. (“Meta”) hereby responds to Plaintiffs’ April 24, 2025  
 2 Objections to Meta’s Reply Evidence. Dkt. 552 (“Obj.”). The objections should be rejected.

3 **The Kambadur (ECF543-13), Pineau (ECF 543-14), and Third-Party (ECF 543-12)**  
 4 **Declarations are not “new” evidence.** The Local Rules state that “[a]ny reply to an opposition  
 5 may include affidavits or declarations.” Civ. L. R. 7-3(c). Evidence is not “new” if it is  
 6 “appropriately responsive to arguments and evidence raised in [the non-moving party’s] opposition  
 7 papers.” *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 877 F. Supp. 2d 838, 857 (N.D. Cal. 2012);  
 8 *Hodges v. Hertz Corp.*, 351 F. Supp. 3d 1227, 1249 (N.D. Cal. 2018).

9 Each of the declarations to which Plaintiffs have objected was properly responsive to issues  
 10 raised in Plaintiffs’ Opposition. The Pineau and Kambadur Declarations responded to Plaintiffs’  
 11 assertions that “there is no evidence to indicate” that certain of Meta’s uses of book datasets were  
 12 transformative (Pl’s Opp. at 14), including experimental use of LibGen in 2022 for research and  
 13 development purposes. Opp. at 11-14; Dkt. 543-13 (Kambadur), ¶¶ 4-7; Dkt. 543-14 (Pineau), ¶¶  
 14 5-6. Plaintiffs contend that these declarations are “inconsistent with the deposition testimony  
 15 provided by the same witnesses,” but the deposition excerpts cited by Plaintiffs demonstrate that  
 16 the opposite is true.<sup>1</sup> See Obj. Ex. A (Kambadur), at 118:8-14, 274:1-288:1, 289:14-294:5, 295:13-  
 17 297:15; Ex. B (Pineau), 135:8-154:17. For example, Dr. Pineau testified in her deposition that the  
 18 2022 experiments on LibGen involved training multiple versions of the model to assess the impact  
 19 of the data, which directly tracks the statements made in her declaration (*id.*, Ex. B, 137:5-139:4);  
 20 and Dr. Kambadur testified about her first-hand knowledge of the process for deciding which  
 21 datasets to use for which models, including whether to use LibGen. *Id.*, Ex. A, 35:5-22. The  
 22 declarations are also consistent with documentary evidence cited by Plaintiffs, including Pritt  
 23 Exhibits 32 and 36, which reflect internal communications contemporaneous with Meta’s 2022  
 24 LibGen download discussing, respectively, approval of use of LibGen for exploratory purposes and  
 25 ablation experiments concerning the same. And because Plaintiffs had a full opportunity to  
 26 examine Drs. Pineau and Kambadur about experimental uses of datasets including LibGen (and, in

27  
 28 <sup>1</sup> Plaintiffs also state that Dr. Pineau “disclaimed having any knowledge of whether Meta ever  
 decided to use LibGen to train its Llama models,” (Obj. at 2), but the cited testimony reflects only  
 that she did not know whether LibGen had been used to train Llama 3.

1 fact, questioned them extensively about Pritt Exhibit 36, including in the excerpts in Exs. A and  
2 B), Plaintiffs' claims of prejudice are without merit.

3 The Third-Party Declaration responds to Plaintiffs' reliance on an otherwise  
4 unauthenticated third-party agreement cited for the first time in Plaintiffs' Opposition. Opp. at 29-  
5 30. Following the Court's authorization of third-party discovery on this agreement on January 21,  
6 2025 (Dkt. 405-406), Meta worked diligently during a period concurrent with the third parties'  
7 ongoing performance under the agreement to authenticate and confirm basic details about the  
8 agreement. Meta served the Third-Party Declaration on Plaintiffs immediately after receiving it on  
9 April 4, 2025, *before* Plaintiffs filed the Opposition on April 7, 2025. Plaintiffs' claims of prejudice  
10 are also without merit as the declaration is concise and consists entirely of undisputed basic  
11 background information.

12 **The Sinkinson Declaration is not "new" expert discovery.** The Sinkinson Declaration  
13 was responsive to Plaintiffs' arguments about whether certain agreements are evidence of an AI  
14 licensing market for Plaintiffs' books. Opp. at 29-30; Dkt. 543-15 (Sinkinson), ¶¶ 2-3. It consists  
15 of opinions taken verbatim from the expert reports he served during expert discovery, about which  
16 he was fully deposed. *Id.*, ¶¶ 1-4. Accordingly, it does not violate the Court's March 25 order,  
17 both because it does not concern the torrenting-related expert discovery and was not "new."

18 **Plaintiffs' defense of the Butterick Declaration is improper.** Plaintiffs' defense of the  
19 Butterick Declaration is not the proper subject of objections under Local Rule 7-3(d)(1). Even if  
20 considered, Plaintiffs' defense should be rejected: Plaintiffs do not address the facts that (1)  
21 Plaintiffs had another expert conduct the same analysis of Books3 that Mr. Butterick performed on  
22 Gutenberg (underscoring that Mr. Butterick's opinions are the province of an expert); and (2) Mr.  
23 Butterick's declaration is clearly comprised of opinions and inference, not a Fed. R. Evid. 1006  
24 "summary," as evidenced by his repeated qualification of observations with the phrase "appears  
25 to" or similar phrases.

1 Dated: April 29, 2025

COOLEY LLP

2  
3 By: /s/ Judd Lauter

4 Judd Lauter

5 COOLEY LLP  
6 BOBBY GHAJAR (198719)  
(bghajar@cooley.com)  
7 TERESA MICHAUD (296329)  
(tmichaud@cooley.com)  
8 COLETTE GHAZARIAN (322235)  
(cghazarian@cooley.com)  
1333 2nd Street, Suite 400  
Santa Monica, CA 90401  
Telephone: (310) 883-6400

10 COOLEY LLP  
11 MARK WEINSTEIN (193043)  
(mweinstein@cooley.com)  
12 KATHLEEN HARTNETT (314267)  
(khartnett@cooley.com)  
13 MATTHEW BRIGHAM (191428)  
(mbrigham@cooley.com)  
14 JUDD LAUTER (290945)  
(jlauter@cooley.com)  
15 ELIZABETH L. STAMESHKIN (260865)  
(lstameshkin@cooley.com)  
16 JUAN PABLO GONZÁLEZ (334470)  
(jgonzalez@cooley.com)  
3175 Hanover Street  
Palo Alto, CA 94304  
Telephone: (650) 843-5000

19 COOLEY LLP  
20 PHILLIP MORTON (*pro hac vice*)  
(pmorton@cooley.com)  
21 COLE A. POPPELL (*pro hac vice*)  
(cpoppell@cooley.com)  
1299 Pennsylvania Avenue, NW, Suite 700  
Washington, DC 20004-2400  
Telephone: (202) 842-7800